

REMARKS

Claims 1-20 are pending. Of those, claims 1, 8 and 14 are independent.

Allowable Subject Matter

Applicant acknowledges with appreciation that the indication of claims 4-5, 11 and 17 defining patentable subject but for their respective dependence upon rejected base claims has been repeated on page 2 of the Office Action.

§103 Rejection: '091 Patent Taken Alone

Beginning on page 2 of the Office Action, claims 1-2, 7-9, 13-15 and 19-20 again are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,123,091 to Newman ("the '091 patent"). Beginning on page 5 of the Office Action, the Examiner presents rebuttal arguments that address remarks made in the response filed May 10, 2005. Applicant traverses.

More specifically, on page 5 of the Office Action, the Examiner states as follows:

[<1>]Newman's[referring to what is disclosed in '091 patent] ... byte length constitutes a second time limit. [<2>]Newman describes the use the two distinct limits in establishing certain periods for timely transmitting data for the computer. [<3>]The two mechanisms provide boundaries on the amount of time for a particular process. Hence, Newman's two parameters serve as time limits.

Applicant continues to disagree with the Examiner's statement <1>, i.e., continues to disagree that the maximum byte count (which the Examiner refers to as the byte length) constitutes a byte limit. The Examiner's statement <1> is an unsupported conclusion, i.e., the Examiner's statements <2> and <3> do not reasonably support statement <1>, as will be shown below.

Question: As to the Examiner's statement <2>, in what passage(s) does the '091 patent discuss that the maximum byte count (byte length) establish a period for timely transmitting data for the computer? Applicant submits that the '091 patent only discusses only the intercharacter timer¹ in the context of establishing a period for timely transmitting data for the computer.

Question: Where does the '091 patent specifically discuss that the maximum byte count (byte length), apart from the intercharacter timer, establishes a preselected period of time that ensures timely transmission of data?

Regarding the Examiner's statement <3>, Applicant submits the following. It is to be recalled² that the '091 patent teaches (among other things) draining a buffer of accumulated bytes by sending a packet of the accumulated bytes if the accumulated number reaches a maximum, i.e., a limit. It is acknowledged that time elapses while bytes accumulate in the buffer of the '091 patent. Applicant is willing to assume for the sake of argument that the use of the maximum byte count (byte length) has the effect of terminating the elapse of time during which bytes dwell in the buffer albeit not after a preselected amount of time has elapsed.

If Applicant merely had claimed generally terminating the elapse of time during which steps (b) and (c) of claim 1 (taken as an example) could be performed, irrespective of what causes the termination to occur, then perhaps the Examiner's position would be reasonable. It would be necessary to ignore limitations in claim 1 in order to be able to interpret it so broadly as to attribute to it a scope that covers any and all causes of termination. The Examiner's statement <1>, in effect, treats Applicant's claims in this manner, i.e., the Examiner has ignored limitations in claim 1. Ignoring claim limitations is improper. Applicant's claim 1 is not so broad as the Examiner improperly makes it out to be.

¹ See, e.g., col. 10, lines 48-50, col. 11, lines 25-26, etc. of the '091 patent.
² See Applicant's response filed May 10, 2005, e.g., at page 14.

Rather, claim 1 recites (underlined emphasis added): “(d) iteratively repeating steps (b) and (c) while neither ... nor the second predetermined time limit ... is exceeded.” In claim 1, the second time limit refers to time that has elapsed “since the receipt of a received event signal corresponding to a first change event in the list of change events” (underlined emphasis added). The ordinarily-skilled artisan would have understood that claim 1 uses elapsed time to determine whether the second time limit has been exceeded. In contrast, the ‘091 patent does not use elapsed time to determine when the maximum byte count (byte length) has been reached. Question: How can the Examiner persist in construing the maximum byte count (byte length) as corresponding to the use of elapsed time to determine whether the second time limit has been exceeded?

On page 8 of the Office Action, the Examiner further states:

The scope of the ... “second time limit” term[] clearly transcend[s] the more narrow scope that Applicant attempts to impute through argument.

In other words, the Examiner has asserted that Applicant has argued unclaimed subject matter. Applicant traverses. In the arguments set forth above, Applicant has recited the language of claim 1 as part of reiterating that a distinction of claim 1 over the ‘091 patent is the second time limit. It is not clear to Applicant why the Examiner believes that second time limit of claim 1 “clearly transcends” a more narrow scope. Question: What about Applicant’s arguments represents unclaimed?

In view of the foregoing discussion, it is submitted that the Examiner’s decision to maintain the rejection is unreasonable.. Accordingly, the §103(a) rejection of claims 1-2, 7-9, 13-15 and 19-20 over the ‘091 patent is improper and Applicant requests that it be withdrawn.

§103 Rejection: '091 Patent + '315 Patent

Beginning on page 4 of the Office Action, claims 3, 6, 10, 12, 16 and 18 are rejected under §103(a) as being unpatentable over the '091 patent in view of U.S. Patent No. 5,881,315 to Cohen ("the '315 patent"). Applicant traverses.

Claims 3, 6, 10, 12, 16 and 18 depend from claims 1, 8 and 14, respectively, and as such exhibit at least the distinction of claims 1, 8 and 14 (noted above) over the '091 patent. The '315 patent fails to make up for the shortcomings of the '091 patent.

Thus, the §103(a) rejection of claims 3, 6, 10, 12, 16 and 18 as being obvious over the '141 patent in view of the '315 patent is improper. Withdrawal of the rejection is requested.

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CONCLUSION

The issues in the case are considered to be resolved. Accordingly, Applicants again request a Notice of Allowability.

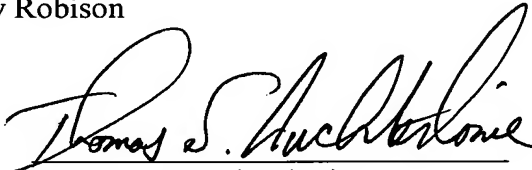
Person to Contact

In the event that any matters remain at issue in the application, the Examiners are invited to contact the undersigned at (703) 668-8000 in the Northern Virginia area, for the purpose of a telephonic interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-2025 for any additional fees under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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